

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 02-6

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Federal Communications Commission  
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**Reply Comments on the Eligible Services List for Universal Service Mechanism  
for Schools and Libraries, Released August 13, 2004**

Funds For Learning, LLC wishes to offer these additional observations in response to comments that were filed regarding the Universal Service Administrative Company's draft version of the Eligible Services List for the 2005 E-rate funding year.

**On-Site Maintenance**

Several commenters expressed concern about some specific language in the eligible services list that was used to describe eligible and ineligible maintenance. Specifically, they noted that the document said: "The following products and services are ineligible: on-site technical support, 24-hour network monitoring, network management, help desks and technical support contracts that are more than basic maintenance." Commenters expressed concern that this language

seemed to suggest that any maintenance delivered “on-site” would not be treated as eligible, a position that they urged the Commission to clarify.

We encourage the Commission to clarify that maintenance can be provided in multiple ways as long as it is eligible for support, and cost-effective. In the 1999 funding year, one of our clients had a funding request for voice and data technicians rejected because it planned to contract with a manufacturer to provide a small number of personnel on-site to support the eligible maintenance needs of a large district. In this case, upon appeal to the SLD, we made a persuasive case that a funding request should not be rejected simply because the contractor would have employees on-site. In the case of a large district like this one, a contract for a small number of dedicated on-site personnel can actually be *more* cost-effective than contracting for on-call service for the volume of service calls that can occur.

The fund administrator may be concerned about some cases in which school districts may have thought that the E-rate program would support a dedicated technician at every school site. Because eligible maintenance has to be tied to eligible equipment, and in line with reasonable business-world expectations and network connectivity, school districts should be free to procure these services in whatever way would be most cost-effective, based on their size and circumstances.

We urge the Commission to review this language to clarify its intent for the applicant and vendor community.

### **Cost Allocation Rules**

We also ask the Commission to review its cost allocation guidelines because we believe the rules are being applied in a way that is hard to defend from a policy standpoint.

As the Task Force on Waste, Fraud and Abuse noted in its report last year, the determination of eligibility for E-rate discounts is a challenging area. In our experience, this is an area in which reasonable people can disagree on how a particular product will be evaluated.

In preparing its application for the 2004 funding year, one of our clients decided to purchase an additional piece of equipment for its network, believing that it would be eligible under the FCC's new determination that firewalls were eligible for support. At the same time, the applicant requested discounts for an Uninterruptible Power Supply, an essential piece of equipment for operating a network in the event of a power failure.

The applicant has now been informed that in the eyes of the Program Integrity Assurance reviewers, the piece of network security equipment is not eligible. As a result, the applicant has been instructed to provide a cost-allocation for the UPS because it would support both eligible and ineligible equipment.

The applicant has decided it will not purchase the network security equipment unless it qualifies for support, and thus is prepared to certify that the UPS will be used only in support of eligible services. However, the applicant has been advised that he has no choice but to cost-allocate the cost of the UPS, an otherwise fully eligible piece of equipment. Further, a requirement for cost-allocation seems bizarre when the applicant would have had to purchase an UPS with the same electrical capacity, whether or not the additional piece of security equipment was added.

Of course, it *is* appropriate to cost-allocate such items as sales tax, shipping and installation when, in fact, the costs were incurred specifically because of ineligible products or services. However, it is not fair to penalize an applicant who applies in good-faith for services that it believes are eligible and then loses access to other eligible discounts as a result. If this position prevails through the review of this application, we intend to appeal to the administrator and then to the FCC, if necessary, to make this case.

Once again, we commend the Commission for providing the stakeholder community with the opportunity to raise points like these in advance of the application season, in hope that applicants and service providers can understand eligibility determinations before they apply, rather than after their applications get rejected.

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